

REMARKS

The Applicant respectfully believes that the final Office action mailed on 3 October 2003 (Paper No. 8) is a premature final Office action for the following reasons.

The Applicant respectfully believes that the final Office action mailed on 3 October 2003 (Paper No. 8) is a premature final Office action because Paper No. 8 includes new grounds for rejections for claim 11, when the claim 11 was not amended by the Applicant and the new grounds for rejections were not based on any information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

On page 5 of paper number 8 (second office action-final), the Examiner stated "Claims 1-11 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komaki et al (USPN 6,236,160; "Komaki") in view of Kaake et al (USPN 6,307,318; "Kaake")."

However, concerning claim 11, the Examiner in paper number 8 (second office action-final) stated on page 9, "In regards to claim 11, ...Both Komaki and Kaake are silent to the partitioned discharge cells displaying blue include a larger width than the portioned discharge cells displaying green, and the portioned discharge cells displaying green have a larger width than the portioned discharge cells displaying red."

Then on page 12 of paper number 8, the Examiner stated " in response to applicant's

argument concerning claim 11, particularly that the different widths of the discharge cells are not known in the art, the Examiner is supplying U.S. Patent 6,424,095 to Hirao et al as evidence that changing the discharge cells widths' so that the blue cells are larger in width than the green cells, and the green cells are larger in width than the red cells, are known in the art.”(emphasis added).

However, Hirao et al was never used in the previous first office action (paper number 6) in rejecting claim 11 and furthermore claim 11 has never been amended because claim 11 is in its originally filed form. Therefore, a new ground for rejection was made by the Examiner that is not necessitated by any amendment.

The *Manual of Patent Examining Procedure* (MPEP) §706.07(a) states “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).”

Therefore, the MPEP § 706.07(a) indicates that a second action on the merits ***will not be made final*** if it includes a new ground for rejection of any claim not amended by applicant or if the amendment does not necessitate the new ground for rejection in spite of the fact that other claims may have been amended or added to require a new ground for rejection. The new grounds for

rejection are looked at claim by claim.

Furthermore, the definition of “a new ground for rejection” does not only refer to newly cited references, but to the below mentioned new grounds for rejection as MPEP 706.07(a) specifically mentions the case of newly cited references separately from “a new ground for rejection” afterwards as “Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.”

For all of the foregoing reasons, the Applicant respectfully believes that the Paper No. 8 is a premature final Office action because of the new grounds for rejection of claim 11 that were not necessitated by amendment nor based on information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p).

RELIEF REQUESTED

In view of the above, Applicant respectfully requests the Commissioner to:

- A. Reconsider the finality of the rejection of the last Office action (Paper No. 8);
- B. Withdraw the finality of the last Office action (Paper No. 8); and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,



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